

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELATE CIVIL JURISDICTION**

WRIT PETITION NO.1790 OF 2004

M/s. Dhananjay Samaj Seva Sanstha
Shri Swami Samarth Adhyapak Vidyalay
Vaibhavwadi,
District Sindhudurg
Through its President
Shri Raka Chavan
Adult, Occ: Service,
Residing at : Vaibhavwadi
District Sindhudurg ..Petitioner

Vs.

1. National Council for Teacher's
Education,
A Statutory body of Government
of India, Manas Bhavan
Shamala Hills, Bhopal.
2. Secretary
Department of School Education
Government of Maharashtra
Mantralay
Mumbai-32. ..Respondents

Mr.A.V.Anturkar Advocate for Petitioner
Mr.Uday Warunjikar Advocate for Respondent No.1
Mr. C.R. Sonawane, A.G.P. for Respondent No.2
Ms. Deepa Chavan Advocate with Mr. Kiran Gandh and
Mr. Vijay Bhere for Maharashtra State Board of
Teachers Education Examination.

**CORAM: F.I. REBELLO &
S.P. KUKDAY, JJ.
DATE: 16TH MARCH, 2005.**

JUDGMENT (PER F.I.REBELLO, J)

. Rule. Heard forthwith.

2. The Petitioners Society had made an application, seeking recognition under Section 14(2) of the National Council of Teachers Education Act, 1993 (which herein after shall be referred to as the Teacher Education Act). The application was

submitted to the Western Regional Committee of Respondent No.1. It is the case of the Petitioners that the State Government gave no objection certificate to the Petitioners to open new D.Ed. College on 9th July, 1999. It was subsequently cancelled on 31st March, 2001. The application made was for granting recognition to the D.Ed. course of two years duration for the academic session commencing from 2001-2002. The application was considered by the Western Regional Committee on merit and letter of intent was issued to the Petitioners herein. The Petitioners state that they made a fresh representation to Respondent No.2 on 10th December, 2002 to issue no objection certificate of the State Government. It is the further case of the Petitioners, that the Committee member of NCTE communicated to the Regional Director, Western Region, NCTE Bopal on 9th December, 2002 and on 10th December, 2002 that the education facilities provided by the Petitioners are satisfactory. In terms of the letter the Petitioners were required to fulfil certain norms and conditions before 31st March, 2003. After fulfilling of norms and conditions the Committee was to be informed, in order to enable the university team to verify the fulfilment of the norms and conditions. The recognition depended on whether the institution fulfilled the norms and conditions. It

is only then that the Regional Committee was to grant recognition commencing from the academic year after the date of the order of recognition.

3. Petitioners herein had filed a Petition before this Court, bearing No.403 of 2003 wherein they prayed that directions be issued to Western Regional Committee to grant recognition on the basis of the already existing records. This Court by an order dated 12th June, 2003 was pleased to direct the State Government to consider the application for grant of no objection certificate and the application for recognition on merits. Subsequent to that and pursuant thereto, the Western Regional Committee was pleased to conduct another inspection dated 28th August, 2003, irrespective of the fact that no objection certificate was refused by the State Government by letter dated 21st July, 2003. In the mean time Regulations in force came to be amended, effective from 23rd June, 2003, pursuant to the judgment of the Apex Court in **St. George Teachers Training Institute Vs. Regional Director National Council for Teachers Education and another (2003) (3 S.C.C.), 321.**

. The Petitioners moved this Court by way of Civil Application dated 3rd November, 2003. The Respondent No.1 was also informed by an Advocate's

notice addressed on behalf of the Petitioners that the proceedings in Contempt had been fixed for hearing on 4th November, 2003. An order came to be passed on 23rd September, 2003 in Writ Petition No..5918 of 2003 which directed Respondent No.1 to take appropriate decision as expeditiously as possible but in any case before one month from the date of the order. The Western Regional Committee of Respondent No.1 decided to grant recognition to the Petitioners for a course of two years duration but for ensuing academic session with an intake of 50 students. Petitioners state that they sent a reminder to Respondent No.2 to permit the Petitioners to admit students for the academic year 2003-2004. Petitioners rely on the judgment of a Division Bench of Aurangabad Bench in writ Petition No.4701 of 2003 dated 9th December, 2003 in the case of Trimurti Pavan Prathishthan Newasa Phata Vs. The National Council for Teacher Education and others. It is the case of the Petitioners that the case at Aurangabad is similar in all respects to the Petitioner's case and they too ought to be granted sanction for the academic year 2003-2004. It is the Petitioners case that students who have been admitted ought to be protected. It is pointed out that the cutoff date for admission was 10th December, 2003.

. The Petition came to be filed on 16th February, 2004. No interim relief was granted in the matter.

. The Respondents have not filed any reply but have addressed themselves to the provisions of the Teacher Education Act and the regulations framed thereunder. It is submitted that considering the provisions of Section 14, including Sub section 14(5), it was not open to the Petitioners to admit students inspite of there being no permission for the academic year. Though the Maharashtra State Council of Examination is not a party, considering the controversy involved we permitted learned Counsel to address the Court on their behalf. Learned Counsel has drawn our attention to the various regulations which are required to be fulfilled before students can be admitted to appear for examination.

4. Before proceeding to examine the matter we may straight way refer to the judgment of the Division Bench of this Court in the case of Trimurti Pavan Prathishthan Newasa Phata (supra) delivered at Aurangabad on 9th December, 2003. In that case NCTE granted permission to the Petitioners therein for the ensuing academic year 2003-2004. In the mean time the Petitioners therein had started admission

process by inviting applications from eligible candidates. The names of the admitted students were displayed and forwarded to the State Government, and the entire admission process had been completed before the cutoff date. It is in those circumstances that the learned Division Bench addressed itself to the question whether NCTE was right in not granting sanction for the academic year 2003-2004. Counsel for NCTE conceded that the Petitioners therein had provided all the infrastructure and other facilities and had duly complied with the norms laid down by the NCTE. It was also conceded on behalf of the NCTE by the learned Counsel that the procedure to grant permission only from 2004-2005 was taken under the belief that the cutoff date had already expired. Considering that and the fact that the institution had invested large amount and had maintained a staff of sixty-six teachers for last two to four years. The learned Division Bench allowed the Petitioners therein to admit students for the academic year 2003-2004. The judgment itself was pronounced on 9th December, 2003. The cut off date was 15th December, 2003. If the facts of the present case are considered there is nothing before us to show whether the procedure for admitting students had been followed and whether the infrastructure was in place. Apart from that the Petitioners therein had

admitted students before the expiry of the cutoff date by following due procedure and the judgment was also pronounced before the cutoff date. In the instant case Petitioners have approached the Court in February, 2004. We are clearly of the opinion therefore, that the judgment in Trimurti Pavan Prathishthan Newasa Phata (supra) is clearly distinguishable both on facts and law, in view of the concessions made on behalf of NCTE. On behalf of NCTE the learned Counsel has now made a statement that he has instructions not to make any concessions. Considering that the judgment in Trimurti Pratishtan Newasa Phata (supra) will be of no assistance to the Petitioners.

5. Let us examine the other contentions as raised on behalf of the Petitioners. The chief contention as urged is that institutions offering or intending to offer a course training in teacher education immediately before the appointed date may for grant of recognition under the Act make an application to the Regional Committee concerned. It is therefore submitted that the application can also be by an institution which is already existing and which has admitted students. Next reliance is placed on Sub Section 5 which reads as under :-

. "Every institution, in respect of

which recognition has been refused shall discontinue the course or training in teacher education from the end of the academic session next following the date of decision of the order refusing recognition under clause (b) of Sub clause (b)"

. It is therefore submitted that the co-joint reading of Sub section 14(1) and 14(5) it would be clear that the recognition granted would relate back to the date of the application and in these circumstances the Petitioners ought to have been granted recognition for the academic year 2003-2004.

6. Section 14 takes into account a situation. That there existed institutions offering or imparting a course or training in teacher education before the Act came into force. If there was such an institution and if it wanted recognition under the Teacher Education Act it was bound to make an application in such form and the manner prescribed by the regulations. The proviso makes it clear that such institutions which were in existence before the Act came into force were entitled to continue such course or training after if it has made an application for recognition within six months from the appointed day and until the disposal of the application by the Regional Committee. The Act

therefore in respect of a class of institutions which were existing when the Act came into force and which had sought recognition under the Act, by virtue of the proviso were entitled to continue till the disposal of the application by the Regional Committee. Sub-section (5) on the other hand makes it clear that when the institutions had applied and had been refused permission they were bound to discontinue the course or training in teacher education from the end of the academic session next falling the date of receipt of the order refusing recognition under clause (b) of Sub section 3. A reading of the Section would not be that an institution desirous of opening a course after the Act has come into force can admit students and continue to impart education until the application is rejected or putting it conversely to admit students even before recognition is given and if then recognition is granted to treat such recognition as if it was given on the date of application. To our mind such a direction in respect of institutions which desires to start a course in teachers training after the Act has come into force would be defeating the very intent of the Legislature. At the highest the provisions can be read in respect of institutions which were already in existence meaning imparting education in teaching when the Act came into force and had applied for

recognition. By no stretch of imagination is it possible to construe the Section so as to include institution which were not in existence when the Act came into force, but after that have applied for recognition and before recognition is granted admit students to a course. This is further made clear by looking at some other provision of the Act. Under Section 16, it is provided that notwithstanding anything contained in any other law in force no examining body shall on or after the appointed day grant affiliation were provisional or otherwise to any institution or hold examination were provisional or otherwise for a course or training conducted by recognised institution unless the institution concerned has obtained recognition from the Regional Committee concerned under Section 14 or permission for a course of training under Section 15. Sub Sections (3) and (4) of Section 17 provide the consequences of withdrawal of recognition of a recognised institution. Under Sub Section (5) of Section 14, an institution for which recognition is refused shall discontinue the course as set out therein. On order being passed under Sub Section (4) every examining body under Section 16(6) shall grant affiliation or cancel affiliation in cases whenever recognition is refused. All this only means that when there were institutions existing and affiliated, then on the application for recognition

under the Act their affiliation could be granted under the new Act or cancelled depending on recognition being given under Section 14(4). It is impossible to visualise a situation that the examining body as defined under Section 2(d) will permit students to appear for an examination, if the institution is not affiliated or permit a batch of students to appear for the examination though ultimately the recognition is refused.

7. Various regulations have been made, setting out the conditions for recognition and permission to start new course or training under the Teachers Education Act. Amongst others, it is required that for eligibility, the candidates must get 50% marks in aggregate in the H.S.C. Examination. The selection procedure is then set out which is based on performance in qualifying examination and NCTE Test and interview to be conducted by Agency, State Government/Institutions provided by NCTE. There are various other provisions which we did not propose to refer to. Suffice it to say that admission of students has to be based on the criteria as set out in the regulations. It is therefore clear that no institution can admit students without following rules and regulations and without being affiliated to the Body conducting examination. This would be an additional factor to hold that institution cannot

admit students without following the criteria as laid down in the regulations. The object of the Act itself is to provide for the establishment of a National Council for Teacher Education with a view to achieve a planned and co-ordinated development of teachers education throughout the country and for the proper registration and maintenance of norms and standards in the teachers education system and for matters connected there with. If we consider all these aspects it will be clear that this would mean that no institution before it is granted recognition and before it is affiliated to a Body which conducts examinations can on their own either pending recognition or on the belief that they would be recognised admit students to a course. If they do so it is on their own risk. We must note the growing practice of institutions even if they have no permission or recognition first admitting students and there after either making students to approach the Court to point out the hardship which is being occasioned. To our mind the extra ordinary jurisdiction of this Court is not meant for such institutions or for students who get themselves admitted to a course in institutions which has not been recognised on the day they are admitted. The consequences must follow even though they may seem to be harsh on the students, specially in the cases where subsequently permission is granted. Apart

from the Teachers Education Act, the State of Maharashtra has enacted, The Maharashtra State Council of Examination Act, 1998. It provides for the establishment of State and Regional Councils. Its powers are set out under Section 23. One of its powers is to accord affiliation, to appear for examination conducted by the Council, provided the institutions applying with the conditions for according affiliation.

8. In the instant case apart from the fact that the permission was granted for the ensuing academic year 2004-2005 there is no material before us to show whether the students were admitted based on examinations conducted as per the regulations or whether they fulfilled the requirements in terms of the regulations. Even otherwise as the institution was not affiliated to the State Council in our opinion this would not be a fit case where any relief can be granted to the Petitioners.

. In the light of that Rule discharged. There shall be no order as to costs.

(F.I. REBELLO, J.)

(S.P. KUKDAY, J.)